



# CITY OF EL PASO DE ROBLES

*"The Pass of the Oaks"*

## CITY COUNCIL MINUTES

Tuesday, August 19, 2008 7:30 PM

MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET

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PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK

### 7:30 PM – CONVENE REGULAR MEETING

**CALL TO ORDER** – Downstairs Conference Center

### PLEDGE OF ALLEGIANCE

**INVOCATION** – Given by Pat Sheean

**ROLL CALL** Councilmembers John Hamon Gary Nemeth, Duane Picanco, Fred Strong, and Frank Mecham

### PUBLIC COMMENTS

- Dale Gustin, inviting public to Black Tie Bingo event on September 6, 2008
- John Borst, requesting status of a Public Records Act Request
- Norma, Moye, inviting public to the 5<sup>th</sup> Annual Olive Festival, August 21-22, 2008

Mayor Mecham invited public to attend a North County Water Forum, Thursday, September 4, 2008, at the Templeton Community Services District (flyer attached to these Minutes)

### AGENDA ITEMS TO BE DEFERRED (IF ANY)

City Manager Jim App informed Council that Agenda Item No. 1 was recommended for continuance to September 2, 2008 to allow additional time to prepare responses to clarifications requested by the Home Builder's Association in a letter dated August 16 2008 (copy attached)

### PUBLIC HEARINGS

1. Adoption of Water Capacity Charges  
R. Whisenand, Community Development Director

Following a presentation by Christine Halley, T. J. Cross Engineers concerning the proposed water capacity charges (i.e., water connection fees) and the proposed water rate structure, Mayor Mecham opened the public hearing. Speaking from the public was Jerry Bunin, Home Builders Association, Cynthia Anthony, REC Foundation, Kenneth Bornholdt, representing River Oaks II, LLC (letter attached); John Borst, and Clark Rudy. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Nemeth, seconded by Councilmember Strong, moved to continue the item to the September 2, 2008 Council meeting.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

2. Introduction of Proposed Water Rate Structure  
R. Whisenand, Community Development Director

The City Council conducted a Public Hearing, regarding the proposed water rate structure presented at the July 1, 2008 Council meeting, and noticed as required by Proposition 218.

Mayor Mecham opened the public hearing. Speaking from the public was Barbara Patridge, representing "Our City, Our Water", Denise Surber, President Library Board of Trustees, Damon Maggiore, Dale Gustin, Jeff Penick, REC Foundation Resolution (see attached), Cheryl Solomon, Karen Reed, Lue Baty, Tom Hardwick, John Borst, Olsen, Neil, Gary Eberle, Russell Surber, Thomas Rusch, Tom Flynn, Paso Robles Cemetery District, and Angela Hollander. There were no further comments from the public, either written or oral, and the public discussion was closed.

***Council adjourned for a 10-minute recess and reconvened at 9:40 PM.***

Councilmember Nemeth, seconded by Councilmember Strong, moved to continue the item to the September 2, 2008 Council meeting which will also allow the Proposition 218 protest period to remain open until the close of the public hearing on that date.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

**CONSENT CALENDAR**

Mayor Mecham called for public comments on Consent Calendar items. There were no comments from the public, either written or oral, and the public discussion was closed.

3. Approve City Council minutes of August 5, 2008
4. Approve Warrant Register: Nos. 78938—79100 (08/01/08) and 79101—79226 (08/08/08).
5. Receive and file Advisory Body Committee minutes as follows:  
Senior Citizen Advisory Committee meeting of July 9, 2008
6. Adopt Resolution No. 08-118 to award a professional services contract to TPG Consulting to Update the Citywide Speed Zone Survey for a not-to-exceed fee of \$15,000. TPG Consulting submitted the lowest bid from the five firms responding to a Request for Proposal.
7. Adopt Resolution No. 08-119 designating Councilmember Fred Strong as the voting delegate to the 2008 League of California Cities Annual Conference, September 24-27, 2008, in Long Beach, CA.
8. Adopt Resolution No. 08-120 appropriating \$15,000 from the Building Education Reserve Fund to cover the cost of education of Building Personnel for Fiscal Year 2009.

9. Adopt Resolution No. 08-121 appropriating \$35,000 to cover the cost of electronic archiving copies of building plans associated with commercial, industrial, and multi-family development for Fiscal Year 2009.

Consent Calendar Items Nos. 3-9 were approved on a single motion by Councilmember Hamon, seconded by Councilmember Strong, with Councilmember Picanco abstaining on Warrant Register Item No. 079058, Mayor Mecham abstaining on Warrant Register Item Nos. 079084 and 079205, and Councilmember Nemeth abstaining on Item No. 3.

Motion passed by the following unanimous roll call vote:

AYES: Hamon, Nemeth, Picanco, Strong, and Mecham  
NOES:  
ABSTAIN:  
ABSENT:

## DISCUSSION

10. Make Appointment to the County's Citizens' Transportation Advisory Committee or Schedule Date for Applicant Interview  
J. App, City Manager

Mayor Mecham opened the public hearing. There were no comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Hamon, moved to appoint Sheila L. Baker to the Citizens' Transportation Advisory Committee for an indeterminate term

Motion passed by the following unanimous voice vote:

## ADJOURNMENT – 10:30 PM:

- TO THE NORTH COUNTY SUPERIOR COURTHOUSE TOUR, AT 3:00 PM ON MONDAY, AUGUST 25, 2008 AT 940 SPRING STREET, PASO ROBLES
- THE REGULAR MEETING AT 7:30 PM ON TUESDAY, SEPTEMBER 2, 2008, AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET

Submitted:

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Deborah D. Robinson, Deputy City Clerk  
Approved:

THESE MINUTES ARE NOT OFFICIAL OR A PERMANENT PART OF THE RECORDS UNTIL APPROVED BY THE CITY COUNCIL AT A FUTURE REGULAR MEETING.

**NORTH COUNTY WATER FORUM**

**Templeton Community Services District**  
420 Crocker Street  
Templeton

Thursday, September 4, 2008  
5:00 to 6:30 p.m.

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Paso Robles Groundwater Basin Topics for Discussion:

- Current and Future Basin Pumping Analysis
- Resource Capacity Study of the area of significant groundwater level decline

Results of the pumping analysis will be incorporated into a draft RCS currently scheduled to be presented during the December NCWF meeting.

- Grant to complete a Paso Robles Basin Groundwater Management Plan

The State Department of Water Resources has funded the grant application to develop a Groundwater Management Plan for the Paso Robles Groundwater Basin. The original Groundwater Management Plan Grant Application is posted at [www.slocountywater.org/site/Water%20Resources/Reports/index.htm](http://www.slocountywater.org/site/Water%20Resources/Reports/index.htm), however it is very large (40 mb). A hard copy for viewing at the Public Works Department in San Luis Obispo or CD upon request is available. The scope and schedule will be modified to reflect the reduced funding amount of \$208,000 and Grant Agreement deadline of May 15, 2010.

Questions? Please contact Courtney Howard at (805) 781-1016 or [choward@co.slo.ca.us](mailto:choward@co.slo.ca.us)



**Home Builders Association**  
OF THE CENTRAL COAST  
*creating quality housing and communities*

Item #1

Saturday, August 16, 2008

Mayor Frank Mecham and  
City Council members  
1000 Spring St.  
Paso Robles, CA. 93446

**RE: Paso Robles City Council Adoption of Water Capacity Charges Agenda Item #1, Aug. 19, 2008**

Dear Mayor Frank Mecham and members of the City Council:

As you know, the Home Builders Association has been engaged with the City of Paso Robles on the proposed water capacity charge since September 2007. We support the Nacimiento Water Project and have publicly stated our willingness to pay our share of the costs for obtaining and distributing Nacimiento water. We have given every effort to resolve questions and concerns quickly so the project can move forward on schedule with the appropriate capacity charge increase. We hired consultants to provide the city with professional communication pinpointing questions and where more information and clarification were needed.

We are disappointed in the city staff's responses. We are disappointed that we most likely have to appear before you at the Aug. 19 public hearing to ask you to continue this item so the staff can address and answer the issues and questions we have raised in frequent correspondence and meetings during the last six weeks.

The Aug. 19 staff report contains only one vague sentence referring to our communications and meetings and only one piece of our correspondence; and, even more unfortunately, it is the letter we sent the city before your last hearing on this, July 1. The Aug. 19 report omits that we have since met with staff twice, submitted two letters and then a summary of outstanding, unresolved and unanswered questions for an Aug. 11 meeting. At that meeting and in subsequent e-mail, staff said it would get back to us with answers to our questions and more information before the Aug. 19 meeting. It has not done so as of Saturday, Aug. 16.

As a result, we have attached for your interest an Excel spreadsheet detailing the correspondence between the association and the city, a pdf file with all that correspondence, and a memo from our consultant, Joanne Brion, that summarizes the issues we raised and the status of their resolution or lack thereof.

Her memo notes the inconsistencies we pointed out to the staff between the Urban Water Management Plan and the HF&H fee study and between the HF&H study and the KJ Water Rate User Study/TJ Cross data. She also notes that the staff has not answered our questions about overcharges related to user account discrepancies and a normal depreciation within the system buy-in fee.

The association recommends that the City Council continue this matter and direct staff to resolve the inconsistencies her memo notes, to add depreciation to the buy-in fee, and to use the Urban Water Management Plan as the basis to determine water needs rather than the HF&H rate study. We look forward to working with the city to resolve this as soon as possible.

Sincerely yours,

Jerry Bunin  
Government Affairs Director  
Home Builders Association

CC: City Manager Jim App

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811 El Capitan Way, Suite 120      805.546.0418: phone  
San Luis Obispo, California      805.546.0339: fax  
93401-3333      www.hbacc.org: internet



Friday, August 15, 2008

Mayor Frank Mecham and  
City Council members  
1000 Spring St.  
Paso Robles, CA. 93446

**RE: Summary of Comments on Water Connection Fee Study and Proposed Fee Increases, City of Paso Robles**

Dear Mayor Frank Mecham and members of the City Council:

The following summary of the Home Builders Association's comments and questions was prepared by our consultant Joanne Brion. If the city has addressed them, it is noted by "Addressed" with explanation as needed.

- 1. Growth – Demand Assumptions.** There is a significant inconsistency between the data used in the UWMP and the HF&H Fee Study, concerning accounts/EMUs. The UWMP uses 25,560 accounts at 2025 and the HF&H Study uses about 17,000 at 2025 and both studies cite the General Plan as the source. The HF&H Study adds an additional 7,000 residents above the General Plan but still has a significantly lower number of accounts/EMUs than the UWMP. **Not Addressed so far** (see charts at end of comments).
- 2. Impact of Higher Accounts.** Applying the current proposed connection fee of \$28,654 to the net new EMUs (19,234) derived from the UWMP study, results in total revenues of about \$551 million from new development; the HF&H Study estimates new development's share of the \$509 million CIP to be about \$247 million and thus, new development would be overcharged about \$304 million through 2025. **Not Addressed so far.**
- 3. New Additional Water Purchases.** The City has not adequately made the case that the additional 'required' 4,000 AFY is needed solely to serve new development; given the \$60 million cost associated with this water, this cost adds substantially to the connection fee. The city's recent letter suggests that this water is needed for a variety of purposes including "sustainable long-term yield from the ground water basin, quality issues from a drinking water and waste stream perspective and peak seasonal considerations." **Not Addressed so far.** (see further discussion at end of document)
- 4. Buy-In Fee for Existing System.** The calculation of the Buy-In Fee component of the connection fee significantly overstates the value of the existing system and improvements and charges new development for improvements which do not serve new development. When a depreciation method is used the Buy-In fee would be about \$3,500 instead of the proposed \$8,500 fee per EMU. How can the cost of buying into the existing system be equal to the current total connection fee which includes funding for significant new improvements? **Addressed potentially; understand verbally that the City will revisit issue of using depreciation of existing improvements based on meeting with Staff on 8.11.08.**
- 5. Cost Allocation Inconsistencies.** There is a fundamental inconsistency between the cost allocation methods used in the HF&H Study and the KJ Water Rate User Study/ TC Cross data, which results in varying fee rates. These two studies have been prepared using the same source data and inputs and currently are not consistent from a methodological standpoint. **Not Addressed so far.**

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6. **Remote Meter Software/System.** The User Fee Study assigns 100% of the cost for the remote metering system to existing development but the HF&H study assigns the cost to new and existing development; e.g., the remote meter system cost. The HF&H study reduced this cost to \$2.9 million. This is an extremely high cost for a software system and as shown in the User Fee Study, new development is not supposed to pay for this item. New development will be paying the new user fees to cover this cost. **Not Addressed.**
7. **Inflation on Debt Service.** The proposed water rate and revenue analysis (by Kennedy/Jenks) study indicates that the proposed connection fee will increase 5.5% per year. Since the majority of this new connection fee is for debt service on bonds that have already been sold and this debt service is fixed, the normal inflation adjusted percentage is unwarranted, resulting in overcharging new development. **Addressed; lowers fee in later years but not until after 2012.**
8. **Documentation and Supporting Data.** The HF&H study does not provide any back up tables, assumptions or calculations as it did in 2007. Please provide their "spreadsheet" references in the 2008 model and any "alternatives" analysis conducted for our review. **Addressed.**
9. **Existing Deficiencies.** The City's analysis does not show existing deficiencies in the current system or show how existing customers will fund deficiencies so new development will not fund them. **Not Addressed.**
10. **Developer Funded Improvements & Credits.** How has HF&H accounted for water improvement projects that are being funded through Specific Plans or Master Plans? The study makes no mention of this and also does not comment on the fact that some new development may build certain improvements or purchase water directly. What mechanism will be available to track credits, etc.? **Addressed generally but not specifically; need language in final report and ordinance that clearly states that credits will be given.**
11. **Fee Comparisons.** In the City's July 1, 2008 Staff Report, the comparison to other cities' connection fees is misleading because it uses a much lower fee for Paso Robles which will only be in effect for one year. The figures need to be compared to the proposed full rate of \$28,900. The economic development implications should be addressed based on the higher amount. This higher rate is likely to push development elsewhere in the region, leaving the city unable to service its debt. While Templeton's fee is likely to increase to \$25,000, as noted by staff, most of the fees for other cities will not likely increase at such a significant rate. **Addressed; City says that only comparing the first year's fee is appropriate. We still contend that the fee will be \$28,000 plus and should be compared to the existing fees.**
12. **Capital Improvement Program.** In the HF&H Study, about \$26 million in improvement costs have been removed from the current water CIP, excluding Nacimiento projects. We have prepared the following table that compares the costs in the 2007 study to the 2008 study, both by HF&H. We would like to know if these improvements have been funded or are assumed to no longer be needed. They have been in the City's CIP for a number of years so we wonder if they will be added after this study and fee is adopted. **Not Addressed directly.**

Comment #1: Growth – Demand Assumptions - Comparison of UWMP and HF&H Assumptions

Todd 2008 Urban Water Management Plan Basis for Accounts/Water Demand

**Table 4  
Past, Current and Projected Water Deliveries**

Water Use Sectors	2000		2005		2010		2015		2020		2025	
	# of Accounts	Deliveries (AFY)	# of Accounts	Deliveries (AFY)	# of Accounts	Deliveries (AFY)	# of Accounts	Deliveries (AFY)	# of Accounts	Deliveries (AFY)	# of Accounts	Deliveries (AFY)
Single Family	6,882	4,500	8,100	4,170	9,425	4,807	10,750	5,445	12,075	6,082	13,468	6,720
Multi-Family	In other categories	In other categories	1,800	685	3,525	1,447	5,450	2,210	7,375	2,972	9,300	3,735
Commercial	437	700	632	868	1,010	1,393	1,389	1,918	1,768	2,444	2,146	2,969
Industrial	Included in commercial	Included in commercial	63	167	101	268	138	369	176	470	214	571
Parks, Landscape Irrigation, Other	301	800	325	845	369	951	412	1,057	456	1,164	500	1,270
<b>Total</b>	<b>7,600</b>	<b>6,000</b>	<b>10,720</b>	<b>6,735</b>	<b>14,430</b>	<b>8,866</b>	<b>18,139</b>	<b>10,999</b>	<b>21,850</b>	<b>13,132</b>	<b>25,560</b>	<b>15,266</b>

**Connections**

2000 total connections from App (April 2000) and assume same breakdown as in 1999 City supplied spreadsheet, multi-family units not all individually metered  
 2005 connections derived from 2004 DWR Public Water System Status form and General Plan update, p. 4 and LU-1, residential units for 2003 which appears to include all multi-family units  
 2025 connections using Boyle's 2025 demand (September 23, 2005) and same water use (AF/connection) as in 2005  
 Note conversion of Boyle (September 23, 2005) land use water demand values to connections results in more residential units than General Plan update (p. 4, max residential units = 18,843)

**Deliveries**

2000 deliveries estimated from total pumping (assuming 7% loss) and similar use per connection as 2004/2005. 2000 does not include all multi-family connections  
 2005 deliveries derived from 2004 DWR worksheet total pumping minus 10% losses and Boyle June 2006b  
 2025 deliveries from Boyle draft Table 5 (September 23, 2005) annual demand for various land use categories at 2025 buildout

Assumed linear increase for all land use categories between 2005 and 2025

**HF&H 2008 Report Basis for Accounts/Demand**

**Figure 2. Equivalent Meter Units**

Meter Size	EMU Multiplier <sup>1</sup>	2008		2025		Growth Increment	
		Accounts <sup>2</sup>	EMUs (2)*(3)	Accounts (3)*(5)	EMUs (2)*(5)	Accounts (5)-(3)	EMUs (4)-(2)
				% Incr.			
5/8" & 3/4"	1.00	8,961	8,961	15,342	15,342	6,381	6,381
1"	1.67	503	838	861	1,435	358	597
1 1/2"	3.33	144	480	247	823	103	343
2"	5.33	215	1,147	368	1,963	753	816
3"	10.00	24	240	41	410	17	170
4"	16.67	18	300	31	517	13	217
6"	33.33	1	33	2	67	1	33
8"	53.33	2	107	3	160	1	53
10"	76.67	0	0	0	0	0	0
12"	116.67	0	0	0	0	0	0
		<b>9,868</b>	<b>12,106</b>	<b>16,895</b>	<b>20,716</b>	<b>7,027</b>	<b>8,610</b>
<b>Population:</b>	1/1/2008	29,934 <sup>3</sup>					
	2025	51,251 <sup>4</sup>					
	Increase	21,317					
	Increase	71% Used to escalate accounts in column 5 above					

1. AWWA *Water Meters - Selection, Installation, Testing, and Maintenance*  
 2. City of Paso Robles: CY 2007 water usage by class data; does not include unbilled accounts.  
 3. Source: California Department of Finance, E-4 Population Estimates, May 2008.  
 4. Buildout to 2025 is from City Council resolution adopting new general plan buildout population of 44,000 plus potential for 7,251 residents beyond General Plan associated with potential annexations and/or General Plan amendments.

11,600 AFY

Note 20,716 EMUs translates into approximately 11,600 AFY based upon current City Demand.

**Comment #3: New Additional Water Purchases**

There is a lack of consistency in terms of the City's basis for the need of the additional 4,000 AFY of Nacimiento Water and who should be responsible for the cost of the additional water. The City has repeatedly stated that new



development should pay for the 4,000 AFY, yet various City correspondence and reports contradict that requirement.

The HBA concurs that there is a need for the additional 4,000 AFY as outlined in the City's July 28<sup>th</sup> response to the HBA, specifically to deal with groundwater issues, water quality and peaking issues:

**Supply Projections** - The July 21<sup>st</sup> correspondence suggests that the forecasted need for a future additional 4,000 AFY of water supply is overstated. The City's water planning documents, including the 2007 Integrated Water Management Plan, point to the need for an additional 4,000 AFY of Nacimiento deliveries above and beyond the current Nacimiento entitlement. This estimate takes into account sustainable long-term yield from the ground water basin, quality issues both from a drinking water and waste stream perspective, and peak seasonal considerations.

By utilizing the information contained in the HF&H report shown below, based upon existing City water use, a case can be made that the anticipated demand in 2025 will be 11,600 AFY. Since the Urban Water Management Plan indicates that 15,265 AFY is required, the inference would be that the approximate 4,000 AFY difference would be used for improving water quality and to address peaking and groundwater issues that would benefit all water users. As a result, all users should pay for the additional 4,000 AFY of Nacimiento Water.

**HF&H 2008 Report Basis for Accounts/Demand**

**Figure 2. Equivalent Meter Units**

(1) Meter Size	(2) EMU Multiplier <sup>1</sup>	(3) 2008		(5) 2025		(7) Growth Increment	
		(4) Accounts <sup>2</sup>	(4) EMUs (2)*(3)	(5) Accounts (3)*% Incr.	(6) EMUs (2)*(5)	(7) Accounts (5)-(3)	(8) EMUs (6)*(4)
5/8" & 3/4"	1.00	8,961	8,961	15,342	15,342	6,381	6,381
1"	1.67	503	838	861	1,435	358	597
1 1/2"	3.33	144	480	247	823	103	343
2"	5.33	215	1,147	368	1,963	153	816
3"	10.00	24	240	41	410	17	170
4"	16.67	18	300	31	517	13	217
6"	33.33	1	33	2	67	1	33
8"	53.33	2	107	3	160	1	53
10"	76.67	0	0	0	0	0	0
12"	116.67	0	0	0	0	0	0
		9,868	12,106	16,895	20,716	7,027	8,610
Population:	1/1/2008	29,934 <sup>3</sup>					
	2025	51,251 <sup>4</sup>					
	Increase	21,317					
	Increase	71% Used to escalate accounts in column 5 above					

Equates to Current use of 6,776 AFY at 2007 by City

Equates to Future use of 11,600 AFY at 2025 by City

Current demand based upon City meter information from KJ June 23 Report  
 Note 20,716 EMUs translates into approximately 11,600 AFY based upon current City Demand.

Both TJ Cross correspondence and the UWMP indicate that the additional 4,000 AFY would benefit both new development as well as existing users by adding a measure of security to the City's water supply.

The Final UWMP pg 17, addresses peaking problems specifically:

outreach program to have when needed to solicit voluntary water use reductions. The use of Nacimiento water by 2010 and future development possibly securing use of 4,000 AFY of additional Nacimiento water will also alleviate peaking problems. Demands can also be reduced with the

The June 24<sup>th</sup> TJ Cross Letter to Kennedy Jenks states the need to have the water available to address “other factors”:

As mentioned above, the City is expected to need an additional 4,000 AFY of Nacimiento entitlement by 2018 depending on the pace of development and other factors. Serious concerns regarding the availability of Nacimiento entitlement exists such that the City wishes to plan for the purchase of availability entitlement as soon as financially feasible.

*Item #1*

**Bornholdt, Kenneth**

**From:** Robinson, Eric N.  
**Sent:** Monday, August 18, 2008 11:51 AM  
**To:** 'RWhisenand@prcity.com'; 'planning@prcity.com'  
**Cc:** 'DMonn@prcity.com'; 'publicworks@prcity.com'; 'iyang@mhalaw.com'; 'Tom Zehnder'; 'Kris Vardas'; 'Dick Willhoit'; Bornholdt, Kenneth  
**Subject:** River Oaks II capacity charge offset for groundwater rights  
**Attachments:** 8-18-08 KMTG ltr to City re Gndwtr.pdf

Dear Mr. Whisenand,

I am water counsel for the River Oaks II project and submit the enclosed letter concerning the need to recognize the project's groundwater rights as an offset in calculating any capacity charge. Please do not hesitate to contact me if you have any questions.

--Eric Robinson

cc: Dick Willhoit  
Tom Zehnder  
Kris Vardas  
Doug Monn  
Iris Yang  
Ken Bornholdt

\*\*\*\*\*

Eric N. Robinson, Esq.  
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August 18, 2008

**BY ELECTRONIC MAIL & U.S. MAIL**

Ron Whisenand  
Community Development Director  
City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446

*Re: River Oaks II overlying groundwater rights*

Dear Mr. Whisenand:

We write on behalf of River Oaks II, LLC to resolve an apparent misunderstanding about groundwater rights associated with the River Oaks II project.

The River Oaks II project encompasses just over 270 acres of land within the City of El Paso de Robles ("City"). The land physically overlies the Paso Robles Groundwater Basin ("Basin") and is owned by River Oaks II, LLC ("River Oaks"). Under basic principles of California water and real property law, River Oaks' ownership of the project land includes ownership of an "overlying" right in the Basin's groundwater.

"An overlying right . . . is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto." *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224, 1240 (2005) (citing *California Water Service Co., v. Edward Sidebotham & Sons, Inc.*, 224 Cal. App. 2d 715, 725 (1964)). A landowner's overlying water right has long been recognized as that owner's private property. *City of San Bernardino v. City of Riverside*, 186 Cal. 7, 24 (1921). Rights to use water are protected by the Takings Clause of the Fifth Amendment to the United States Constitution. See *Tulare Lake Basin Water Storage Dist. v. United States*, 59 Fed. Cl. 246, 247 (2003) (awarding just compensation for regulation restricting use of right to water).

Based on recent discussions with City staff, we are concerned that the City might be assuming that it has a special right to all groundwater lying within its municipal boundaries and that this assumed right somehow supersedes River Oaks' overlying right in groundwater arising from its ownership of the River Oaks II project land. The California Supreme Court "refuted" that precise theory 87 years ago, rejecting a city's claim that "the part of the waters pertaining to the lands within the city is set apart by law for the common public use of the owners of the land and other persons in the city, that the city has in some manner become the

Ron Whisenand  
City of El Paso de Robles  
August 18, 2008  
Page 2

11923.008

administrator of this public or common use in place of the landowners, and has become substituted to their individual rights for the benefit of all . . . ." *City of San Bernardino, supra*, 186 Cal. at 24. Although the City may have its own overlying groundwater rights to irrigate parks or other overlying lands that it owns, the City has no right or interest that in any way supervenes or extinguishes River Oaks' overlying groundwater right.

We hope this clarification of controlling law assists the City in seeing that the overlying groundwater rights associated with the River Oaks II project must be recognized as an offset in calculating the water capacity charge that has been proposed for the project.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation



Eric N. Robinson

ENR

cc: Dick Willhoit  
Tom Zehnder  
Kris Vardas  
Doug Monn  
Iris Yang  
Kenneth C. Bornholdt

898237.1

## PASO ROBLES GROSS CASH

<u>Fund Name</u>	<u>Cash Balance As Of</u>		<u>Restrictions or</u>
	<u>6/30/2007</u>	<u>6/30/2008 (a)</u>	<u>Commitments</u>
General Fund Reserve & Contingency Fund	\$6,914,587	\$5,677,139	Unrestricted
Public Facilities Improvement Funds	\$6,688,330	\$6,298,871	Restricted
Community Dev/Bldg Permit Training Fees	\$285,136	\$305,198	Restricted
Transportation Related Funds	\$5,489,975	\$4,740,106	Restricted
Capital Project/Replacement Funds	\$2,120,219	\$2,607,155	Committed
Water Enterprise Related Funds	\$12,943,346	\$21,804,310	Restricted
Specific Plan Related Funds	\$914,086	\$754,358	Restricted
Sewer Enterprise Related Funds	\$11,891,381	\$12,376,472	Restricted
Impact Fee Related Funds	\$2,998,744	\$3,435,610	Restricted
RDA/CDBG Related Funds	\$1,220,420	\$2,119,666	Restricted
Airport Related Funds	\$958,472	\$1,168,643	Restricted
Debt Service Related Funds	\$7,608,966	\$6,325,473	Restricted
Trust Funds	\$1,253,273	\$1,203,422	Restricted
Special Districts Related Funds	\$26,185	\$119,929	Restricted
Landfill Related Funds	\$1,414,210	\$1,515,561	Restricted
Public Safety Related Funds	\$243,230	\$156,437	Restricted
Agreements Between Entities Related Funds	\$329,452	\$341,221	Restricted
Misc Funds	\$681,282	\$611,987	Restricted
<b>Total For All Funds</b>	<b>\$63,981,294</b>	<b>\$71,561,558</b>	

Economic downturn will likely require use of apprx. \$1.5M in 09 & 10. State may "borrow" \$1.3M to address State budget shortfall.

Development Impact fees - may be used only for development of new general government (i.e., non-utility) buildings

Permit fees paid exclusively to fund technical update training.

Gas tax funding for transit related projects

Committed to adopted/essential projects including technology replacement, vehicles, fire trucks, etc.

24% development impact fees - may be used only for new water facilities to serve development. 29% retained earnings to fund repair and replacement of existing facilities. \$13.4M committed to adopted capital projects.

Development impact fees may only be used for new improvements that serve development to offset impacts of a Specific Plan area.

34% development impact fees - may be used only for new water facilities to serve development. 66% retained earnings to fund repair and replacement of existing facilities. \$6.6M committed to adopted capital projects.

Development Impact Fees that may only be used for new Public Safety, Park/Land/Open Space, Storm Drainage facilities

Debt Service - \$2.5m, Housing fund - \$433K, CDBG - \$40K

May only be used for improvements that serve aviation/benefit Airport.

Cash set aside to fund existing debt payments/obligations.

Monies held in trust for others; not available for City use.

Landscape/Lighting, CFD's

Funds held in reserve explicitly and only for landfill closure/postclosure.

Development impact fee exclusively for public safety (Police & Fire) related improvements.

Cuesta College, SLO County Schools, Youth Scholarship

Post Employment Benefit Accruals

**NOTE:**

- (a) Preliminary amounts as Fiscal Year 2008. Adjustments still need to be made.
- (b) YE allocations still need to be made. Most likely to be similar to last year.
- (c) YE transfers still need to be completed.

Jeff Penick  
Item #2



**Board of Directors**

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Whereas REC Foundation is a non profit fundraising organization committed to creating enhanced programs, places, and open spaces for quality recreational experiences in Paso Robles; and

Whereas REC Foundation recognizes that city parks and recreation programs are essential to a high quality of life for Paso Robles residents and is therefore committed to contributing time, effort and funding to enhance city parks and recreation; and

Whereas through private sponsorship and fundraising, REC Foundation hosts the summer concerts in the park and Shakespeare Under the Moon; REC Foundation is a major sponsor of July 4<sup>th</sup> fireworks event at Barney Schwartz Park; REC Foundation purchased and installed shade structures at the pools and at Barney Schwartz Park bleachers; REC Foundation kicked off the fundraising effort to build the Sherwood Forest play area; and

Whereas the city has demonstrated a need for a new source of clean, dependable, city-owned water; and has made a commitment to purchasing water through the Nacimiento Water Project; and

Whereas if payment for the water is not made through user fees, the city's parks and recreation programs will be severely impacted, resulting in the loss or reduction of youth and adult sports, senior center activities, recreation classes, Oak Park recreation program, aquatics programs, special events, park and trail maintenance;

Therefore, be it resolved that REC Foundation community volunteers support the City in its pursuits of providing clean, safe, reliable water, and REC Foundation supports the City Council proposed water rates so that parks and recreation may continue to be enjoyed by today's visitors and residents as well as future generations.

REC Foundation  
August, 2008



Centennial Park 600 Nickerson Drive Paso Robles, CA 93446 805-237-3988

Item #2

**To: Paso Robles City Council**  
**From: John Borst**  
**Date: 8.19.08**

Subject: Text of my August 15, 2008 Election Complaint sent to the California SECRETARY OF STATE'S OFFICE, ELECTION FRAUD INVESTIGATION UNIT, 1500 11TH STREET, 5<sup>TH</sup> FLOOR, SACRAMENTO, CA 95814.

City Officials in Paso Robles, CA are attempting to levy a "fee" upon water customers in lieu of a special tax. Unable to produce an Engineer's Report stating the special benefits to customers provided by the capital cost of public improvements, City officials have initiated a Proposition 218 written protest procedure resulting in over 1000 votes fraudulently cast by a "deceived" and upset public. Jim App, City Manager, has publicly stated, "capital project decisions are not subject to Proposition 218 provisions," to which the City's Mayor, Councilmen, and Attorney have agreed. My right to a ballot vote to approve or disapprove a special tax in this matter is consciously and willfully being denied by City officials. This is a violation of the due process clause, Calif. Constitution Article 1, Sec, 7(a), as well as Proposition 218, Article XIIC, Sec. 2(d).

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Street, Apt. No., or PO Box No. <i>1500 11th St. 5th floor</i>		
City, State, ZIP+4 <i>Sacramento, CA 95814</i>		
PS Form 3800, August 2006		See Reverse for Instructions



## **The Rate increase is actually a Special Tax**

“The sole purpose of the proposed rate increases is to provide adequate revenues to meet debt and operating expense obligations for the pipeline and treatment facility.” (Source: Paso Robles Proposition 218 Notice of Public Hearing, June 2007, sent to all city water customers.) The City’s desire to solely raise revenues to meet debt and operating costs to pay for the same capital projects is again confirmed in the City’s June (and August) 2008 water rate report by Kennedy/Jenks consultants. The rates presented in that report appear in the July 2008 Proposition 218 Notice of Public Hearing sent to City water customers.

### **The fee or rate increase is a special tax because:**

In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (Shapell Industries, Inc. v. Governing Board (1991) 1 Cal.App.4th 218, 240 [1 Cal.Rptr.2d 818])

Under modern law, the central distinction between a tax and a fee appears to be that a tax is “imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. [Citations.]” (Sinclair Paint Co. v. State Bd. of Equalization (1997) 15 Cal.4th 866, 874; Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.4th 685, 727.)

Proposition 218 defines a “general tax” as any tax imposed for general government purposes. See Cal. Const., art. XIII C, § 1(a). Proposition 218 defines “special tax” as any tax imposed for specific purposes, including taxes imposed for specific purposes, and placed into a general fund. See Cal. Const., art. XIII C, § 1(d).

The essence of a special tax “is that its proceeds are earmarked or dedicated in some manner to a specific project or projects” (Neecke v. City of Mill Valley (1995) 39 Cal.App.4th 946, 956).

**The definition of special tax under Proposition 218 means that a tax with an identified purpose requires two-thirds vote** (See Howard Jarvis Taxpayers Assn. v. City of Roseville (2003) 106 Cal.App.4th 1178).

As with general taxes, no local government may impose, extend, or increase any special tax until such tax is submitted to the electorate and approved. Cal. Const., art. XIII C, § 2(b). But the imposition, extension or increase of special taxes requires a two-thirds vote of the electorate voting in an election on the tax. Cal. Const., art. XIII C, § 2(d).

**Statement by Senator George Runner (CA State Senate) on the distinction between a tax and a fee:**

<http://cssrc.us/web/17/pulications.aspx?id=2654>

**In accordance with the 14th Amendment of the U.S. Constitution,** similarly situated properties in the Paso Robles Groundwater Basin must be treated the same. Nonetheless, the cost of the Nacimiento Water Project has been distributed unequally among properties in the Basin, all of which receive a general benefit from the Project as described in Paso Robles’ March 2008 water mailer. To enact such an inequitable special purpose tax requires a two-thirds vote.

*item #2*

**To: Paso Robles City Council**  
**From: John Borst**  
**Date: 8.19.08**

**My critique/protest of the July 2008 City water rate proposal is as follows.**

1. The amount of the fee or charge proposed for imposition on each parcel was improperly calculated for three basic reasons.

A. The June 2008 Kennedy/Jenks water rate study identifies 9957 accounts as determinate of the proposed rates; the August 2008 Kennedy/Jenks water rate study update identifies 10,540 accounts as determinate of the proposed rates. Yet according to the 7/7/2008 Invoice from Poor Richards Press line item 1 indicates 11,690 Notices of Public Hearing were sent to City water account holders. Consequently, the rates published in the July 2008 Notice of Public Hearing are in error and excessive, being calculated for 9957 accounts when this is simply not the case. As number of accounts increase, rates should go down. The proposed rates need to be adjusted downward for any increase in the number of accounts, something even Kennedy/Jenks did not do in their Aug. 2008 revision of the water rate study. In short, revenues derived from the rates or charges will exceed the funds required to provide the property related water service. This is a violation of Proposition 218 Article XIII D, Sec. 6b (1).

(At the end of Fiscal Year 2007 11,690 accounts were on record as reported by Poor Richards Press. See their invoice for actual # of rate mailers sent to water customers. Also see the attached rate and revenue calculations titled, "A Critique of the Paso Robles-Kennedy/Jenks Water Rate Study," to learn how much is collected in comparison to what is needed in FY 2011/12, and why revenue collected by the City's proposed water rates is a violation of Proposition 218 Article XIII D, Sec. 6b (1))

B. California Government Code 6548 states that when revenue bonds are "issued to provide all or any part of the funds required for the acquisition, construction and financing of a project" it is required to calculate "bond interest estimated to accrue during the construction period and for a period of not to exceed 12 months after completion of construction." The calculations performed by Kennedy/Jenks in their water rate report were on 30 years of bond interest. Hence, the rate structure proposed by the City to it's water customers is grossly in error and excessive, to say the least, and is in violation of California Government Code 6548.

C. From 2003 to 2007 the City's water enterprise collected approximately \$20,000,000 million dollars in net revenue, i.e., more than was needed to

provide water service. The Kennedy/Jenks calculations did not take into account these “funds on hand” when determining the proposed water rates. Hence, the rates are a violation of Proposition 218 Article 6b(1). That is, revenues derived from the proposed rates or charges, failing to take into account that \$20,000,000, exceed(s) the funds required to provide the property related service by at least that amount. (I was told by Mayor Mecham the Kennedy/Jenks water rate study would take the \$20,000,000 into account when establishing and calculating the proposed water rates. I expressed this again to Mayor Mecham at the July 2, 2008 City Council meeting.) That money was not taken into account in establishing the proposed rates. So, where is it? Again, please let me know in writing why it was not taken into account by Kennedy/Jenks?

**2. The basis upon which the amount of the proposed water rates or charge(s) was calculated is not shown in the mailer. To not state the basis on the “written notice” mailed to parcel/record owners is a substantive and procedural violation of that requirement expressly mentioned in Proposition 218 Article XIII D 6a(1). (E.g., what amount of revenue is actually needed or requested, as well as the number of water customers upon which the calculations were based?)**

**3. Other than perhaps to relieve “Basin stress” and the need for water conservation, the “reasons” for the proposed rate increase mentioned in the July 2008 water rate mailer are vaguely defined and poorly identified, appearing more like excuses or scare tactics to compel current rate payers to approve the proposed increase in water rates. By contrast, no mention is made in the mailer (i.e., the Notice of Public Hearing) of the capital projects, sewage problem, General Plan build-out resulting from new development, or the associated City debt service the proposed water rates might fund. The City has communicated to water customers in the past (2007 and 2008) that these are the specific “reasons” for any proposed rate increase, but they are not mentioned this time in the July 2008 Notice of Public Hearing. To not be clear, explicit and provide adequate explanation in the Notice of Public Hearing about the specific reasons for the rate increase when levied as a “fee” or “charge” is a violation of the substantive and procedural requirements of Proposition 218 Article XIII D 6a(1).**

4. Since current water customers are already receiving water service, and no financial basis, project rationale, or specific services affected by the new rates are explicitly identified or proposed for funding in the July 2008 Notice of Public Hearing, clearly revenues derived from the fee or charge exceed the funds required to provide the property related service. Any revenue to be collected under the proposed water rates exceeds that actually needed to fund the cost of service provided to current water customers. As this is the case, it is a violation of Article XIII D, Sec. 6b(1).

5. Since payment of debt service, facilities to be built, and sewage treatment are not given as reasons in the mailer for the increased charges, the mailer as written

precludes their consideration for funding. Consequently, one must conclude City officials will use revenues derived from the proposed rates or charges for some purpose other than that stated in the July 2008 water mailer. To do so will be a violation of XIID Section 6b(2).

**6. If we take what the July 2008 mailer states as “reason enough” for the rate increases -- the increased water rates or charges are needed because the Governor has declared a drought in the State of California, the Paso Robles Groundwater Basin is stressed, water levels in some City wells are declining, and on June 23 water demand exceeded available supply -- then no proportional benefit associated with the increased rates is being conferred on property or parcel owners over and above water service now shared in common with the general public to justify an increase in water rates. Each “reason” is contestable as actually caused by City water customers and for which they alone can be held responsible. For example, the City has presented no measurable evidence that City water customer’s are solely responsible for any amount of the Basin “stress” referred to in the July 2008 City water mailer. Likewise, the June 23 “peak demand” problem mentioned in the mailer was apparently resolved by water customers, non-water bill paying customers, and City water conservation efforts (the problem did not continue). Consequently, the City’s proposed rates or charges, when imposed upon water customers’ parcels as an incident of property ownership, exceeds any proportional cost of the service that can justifiably be attributed solely to current City water customers’ parcels. No causal written justification, whether in the July 2008 mailer or elsewhere, for an increase in water rates which can be solely attributed to the measurable actions or water needs of current City water customers’ parcels has been presented to the public by City officials. That is, the problems identified in the July 2008 Notice of Public Hearing can be met through water customer and non-bill paying citizen water conservation, better City management of available water supply, and/or better City/County/Overlyer management of the “stress” caused by all Paso Robles Groundwater Basin users. Thus, the rates proposed by the City for imposition upon identified parcels (current water customers) are not proportionate. The proposed rates exceed the proportional cost of the service that can specifically be attributed to just City water customers’ parcels or persons. This is a violation of Article XIII D, Sec. 6b (3).**

7. Since the provision of any actual supplemental water service or facility solely for current City water customers’ use is not readily identified or discussed in the City’s July 2008 water rate mailer, to impose a rate increase or charge for a service not provided is a violation of Article XIID Sec. 6b(4).

8. Article XIID 6b(5) states, “no fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.” To relieve “stress” or prevent “overdraft” on the Paso Robles Groundwater Basin is a service provided to the “public at large” in substantially the same manner as it is to City property owners. Indeed, “on September

Paso Robles Groundwater Basin is a service provided to the “public at large” in substantially the same manner as it is to City property owners. Indeed, “on September 6, 2005 the City entered the Paso Robles Groundwater Basin Agreement with the County of San Luis Obispo and a number of overlying landowners” (Paso Robles Urban Water Management Plan, 2008, p. 3, 14). The Agreement is a joint cooperative effort by all Basin users to prevent Basin overdraft and relieve Basin stress: “Execution of the Paso Robles Groundwater Basin Agreement and initiation of cooperative groundwater monitoring and management reduces the likelihood of overdraft and water rights disputes and promotes the long-term reliability of groundwater supplies” (p. 14). The Basin Agreement benefits both City and County residents. For example, a City March 2008 water mailer states: “Domestic rural demand for groundwater is expected to double over the next 25 years” and “without an additional source of water, demand may soon exceed the yield of the Paso Robles Groundwater Basin” and “Lake Nacimiento water is high quality for consumers and will yield long-term water quality benefits to the Paso Robles Groundwater Basin.” Thus, revenue derived from any fee, rate or charge levied upon City water customers is to the benefit of all Basin (City, County and overlying) users. Consequently, providing such a general governmental service, as discussed above and in the City’s July 2008 water rate mailer, is a violation of Article XIII D Sec. 6b(5). If the revenues derived from the proposed rates as stated in the July 2008 Notice of Public Hearing are used for something other than to relieve Basin “stress” and/or water conservation by all citizens of Paso Robles to help meet peak water demands, it is a violation of Article XIII D Sec 6b (2). In addition, the proposed rate increase also is a violation of the 14th Amendment of the U.S. Constitution and Article 1 Sec. 7 (a) of the California Constitution. That is, similarly situated properties in the Paso Robles Groundwater Basin must be treated the same, bear a burden of the costs. The cost of the Nacimiento Water Project has been distributed unequally and disproportionately among properties in the Basin, all of which receive a general benefit from the Project as discussed above.

9. In 2007 the City officials expressed connection fees “would increase to provide adequate revenues to meet new infrastructure needs arising from new development and capital construction obligations for its [Nacimiento] pipeline and treatment facility.” (SLO Financing Authority document, Sept. 10, 2007, p. A-19) Then in July 2008, contrary to what City officials would have you know, numbers from the City’s recent water rate study confirm current water customers will pay not just 1/2 but ALL of the capital cost for any infrastructure needed to annually bring 4000 acre-feet of Nacimiento water to Paso Robles. Which means NEW DEVELOPMENT FOR THE NEXT 30 YEARS WILL CONTRIBUTE LITTLE OR PAYS NOTHING.

10. According to SLOLAFCO’s Municipal Service Review (MSR), the City has annual rights to eight cubic feet per second from the wells situated adjacent to the Salinas River. The City’s water supply is adequate to serve the additional Sphere of Influence Areas. (MSR, p.1-7) No limits have been placed on the water drawn from the Paso Robles Formation. (MSR, p. 3-7) ...The Water Assessment completed pursuant to water code 10910 concluded **the City has an adequate water supply to accommodate the 20 years of growth planned for in the recent update of the General Plan** (Source: <http://www.slolafco.com>). In short, current water customers do not require 4000 acre-

feet of Nacimiento water.

11. California law in GOVERNMENT CODE SECTION 53750 states:

For purposes of Article XIIC and Article XIID [Proposition 218] of the California Constitution and this article:

**"Assessment" means any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or service, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement, or the cost of the service being provided.**

The City's proposed July 2008 water rates are to raise funds to pay for the capital cost of public improvements. "Benefits" of the Nacimiento Water Project's capital cost have been published in Oct. 2007 and Jan. 2008 Paso Robles water mailers. Briefly, alleged benefits are to: diversify supply, increase reliability, enhance quality, and meet demand. **Assessments may in reality be special taxes if the property assessed receives no special benefit beyond that received by the general public. (*Knox v. City of Oakland, supra*, 4 Cal.4th at pp. 142-143.)**

**City Officials have failed to comply with Proposition 218 Article XIII D Sec. 6 for the reasons discussed in items 1 to 11 above, as well as for those reasons stated specific to the Nacimiento Water Project (NWP) in Cynthia Hawley's letter dated Dec. 3, 2007 (see attachment). City Officials, knowing the law regarding assessments and the required election procedures to lawfully fund the capital costs of public improvements, have been unable to identify in an Engineer's Report any measurable special benefits associated with the proposed July 2008 City water rates. This is a failure to comply with Proposition 218 Article XIII D Sec. 4. Consequently, for City Officials to raise our water rates as proposed they will have to achieve approval of such rates by complying with California election and voting requirements for special taxes as stated in Article XIII C of Proposition 218.**

Given the above, please tell me in writing, point by point with the citation of current California case law relevant to items 1-11 and each previous objection made by Cynthia Hawley in her letter, how the proposed July 2008 City water rates can possibly be in compliance with Proposition 218 Article XIII D Sec. 6, as well as the other laws stated in above protest items 1 to 11. I expect a response for my review before the next City Council meeting on 9/2/08. I take your failure to send a full response to mean you agree with my protest stated herein. Please send your written response to: 209 Navajo Avenue, Paso Robles, CA, 93446.

Thank you.  
John Borst

## **A Critique of the Paso Robles-Kennedy/Jenks Water Rate Study** **Presented to Paso Robles City Council by John Borst, PhD, on 8.19.08**

**On page 2 of Agenda item 4 (CC meeting 7/1/08) Mr. Monn makes the following statement:**

*For the water capacity charges, the recommended charges would pay for one-half of the City's current entitlement in the Nacimiento Water Project and one-half of the proposed water treatment plant costs.*

What do the numbers from the water rate study say about his claim:

Total revenue needed in FY 2011-12 to cover the cost of service according to page 29 in the June 2008 report is \$18,159,719 (\$17,266,742 is stated in the August 2008 Kennedy/Jenks report update). Yet the numbers from the water rate study suggest that capacity charges will not be paying for 1/2 of the City's water project costs as Monn states. On the contrary, City water customers are being asked to pay for the FULL entitlement (4000 afy) and water treatment plant, and more!

As an example, using the charges for single family residences only , here's why this is the case:

On page 17 of the June water rate study it states 25 hundred cubic feet of water was the average customer per month use in 2007. (The Aug. 2008 water rate study update says is the average is 26. The lower figure, 25 will be used, giving the City the benefit of the doubt.) Using that average we can then determine anticipated total revenues for the City in FY 2011-12. Referring to the chart on page 3 of the June 2008 water rate study report is the water rate structure for 2011-2012. For 2011 the Fixed flat rate is \$22.48 and the Variable rate is \$4.86; and for 2012 the rates are \$24.95 and \$5.00, respectively. Rates for 6 months of each charge apply for FY 2011-2012.

To calculate total revenue for FY 2011-12 we do the following:

First, we need to get the total \$ monthly cost per customer. Multiply the average water use per month, 25, by  $\$4.86 + \$5.00 \div 2$  to get the average monthly variable rate cost:  $25 \times \$4.93 = \$123.25$ . Then add to it the monthly fixed/flat service charge,  $\$22.48 + 24.95 \div 2 = 23.72$ . This then comes to a monthly customer cost of \$146.97 ( $\$123.25 + 23.72$ ). Subtract the difference between rates for the first 5 units used (i.e., \$3.70) from \$146.97 and you get \$143.27 a month per customer.

Second, to get the yearly cost per customer we now must multiply \$143.27 times 12



months. This comes to a yearly cost of \$1719.24.

Third, to get the approximate total revenue collected from all city water customers we multiple the number of customers expected to exist in FY 2011-12 (11690 current customers + 60 more customers in 2009-10 +100 more in 2010-11 + and 150 more in 2011-12 = 12,000) times \$1719.24. Consequently, total revenue planned for collection in FY2011-12 comes to \$20,630,880 (12,000 x \$1719.24). Or, to use the figure of 30 as the monthly customer usage stated by Mr. Monn in his report, repeating the same procedure above results in a total FY 2011-12 revenue of \$24,180,480.

Given the above, the conclusion is new development capacity charges are NOT paying for one-half of the City's current entitlement in the Nacimiento Water Project and one-half of proposed water treatment plant costs. Water customers are being asked to pay the **full** cost of the entitlement and water treatment plant. That is, if total revenue of \$18,159,719 (or \$17,266,742) is needed in fiscal year 2011-12, and that amount or more is collected entirely from water customers' monthly billings (which has been shown to be the case, \$20,630,880 to be exact), new development in effect, by way of capacity charges, has NOT contributed 1/2, if anything.

This conclusion raises two disturbing questions: One, just what will be done by the City with those capacity charges collected if development is not paying 1/2 the costs (~\$3.6Mil or \$5.5Mil w/O&M)? There appears to be no accounting for it given what water customers are being asked to pay.

And second, will the revenues collected from customer billings (not to mention adding capacity charge revenues) exceed the cost to provide the water service? Yes! Based on FY 2011-2012 numbers, and certainly with additional bill paying water customers (every 300 more after FY 2011-2012 means at least \$515,000 yearly in new revenue), it is the case -- NOW and in the future.

Finally, because revenues collected by the City's proposed water rate increase have been shown above to be more than is actually required to provide the City's water service, it is a violation of Proposition Article XIII D, Sec. 6a(1). (Even using the City's updated Aug. 2008 figure of 10,422 accounts rather than 11,690 this finding holds true. \$18.45 million is collected in FY 2011-12 [10,732 x \$1719.42], while only \$17,266,742 is needed for water service.)

# CYNTHIA HAWLEY

ATTORNEY AT LAW

December 3, 2007

Mayor Frank Mecham  
City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

Dear Mayor Mecham:

I represent Concerned Citizens for Paso Robles, an association formed to ensure that rate increases imposed by the City of Paso Robles for municipal services conform to state and local laws including Proposition 218, California's Constitutional "right to vote on taxes act".

As you know, California's Constitution was amended by Proposition 218 and states at Article XIII D, Section 6(b):

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

.....

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

Based on the following analysis, the increased water fee proposed by the City of Paso Robles for the purpose of generating revenue to pay for the Nacimiento Water Project is in violation of the above constitutional requirements.

The revenues generated by the proposed fee increase to pay for the Nacimiento Water Project exceed the funds required to provide water service to the charged parcels and the amount of the fee exceeds the cost of water service attributable to the parcels charged.

The City of Paso Robles has provided no data to show that a new source of water is required by current water customers. To the contrary, the City's August 7, 2007 staff report (Agenda Item no. 25) on the Paso Robles Water System and Water Supply, states that Paso Robles meets its water supply demand through pumping groundwater from the Salinas River and the "east side" Paso Robles Basin and that "[T]hese water supplies are expected to meet all future water demands through 2025." Based on these statements, it is clear that existing water resources and infrastructure provide current water customer parcels with a sustainable water service. In

P.O. Box 29, Cambria, CA 93428  
Phone 805-927-5102 Fax 805-927-5220

addition, the Notice of Public Hearing Regarding Proposed Increase in Water Rates states that the use of groundwater is cost effective to the extent that "Paso Robles water rates have been among the very lowest in the State." Since the City is not seeking a fee increase to pay for costs of treating and delivering water from existing groundwater supplies, it is assumed that the current revenues are adequate to provide for existing water services.

Paso Robles' has an adequate and cost effective water supply for current customer parcels through the year 2025. Four thousand acre feet per year of new water from the proposed Nacimiento Water Project is not required to provide water service to the parcels of existing water customers.

Consequently, revenues derived from the proposed fee increase to fund the unneeded project are not required to provide adequate and sustainable water service to current customer parcels.

Pursuant to the court in Howard Jarvis Taxpayers Association v. City of Fresno (127 Cal.App. 4th 914) where a fee is "not required to provide the property related service" it exceeds the cost to provide the service pursuant to Article XIII D, Section 6(b)(1). Thus, the proposed fee increase to existing customer parcels to pay for the costs of unneeded water delivery infrastructure and a new unneeded water source will produce revenue in excess of that required to provide water service to the those parcels, and the amount of the fee will exceed the cost of water service attributable to the charged parcels in violation of Proposition 218.

Even if the proposed fee increase could be construed to represent the cost of water service to existing customer parcels, it would be in violation of Proposition 218 for two reasons.

First, according to the October 2, 2007 report on Reconsideration of Water Rate Options by City Manager James App, the total annual cost of the Nacimiento Water Project for the City of Paso Robles will be approximately \$6.8 million and the fees per customer parcel are based on this total amount. Since current fees already include increases pursuant to Ordinance No. 882 to pay for the "construction costs" of the Nacimiento Water Project, the currently proposed second fee increase to pay for the same construction costs would appear to levy redundant revenues in excess of those required to fund construction to the extent that Ordinance 882 fees have generated and will continue to generate revenues for the same purpose.

If the currently proposed fee increase takes revenues generated by Ordinance No. 882 into account so the proposed fee increase will not generate revenues in an amount calculated to pay for the total costs of construction of the Nacimiento Water Project, please provide my office with the calculations that demonstrate that accounting.

Second, the fee increase is charged to existing water customers only and no calculation is provided to account for costs attributable by new water service applicants and to sewer rates. In his August 3, 2004 report on Sewer and Water Development Impact Fees, City Manager James App stated that because a "sharp rise in fees is attributable to the inclusion of Nacimiento Water (including the treatment facility for same) and additional water storage capacity for new development", 50% of the cost of Nacimiento Water would be allocated to new development and "given the water quality issue as it relates to existing wastewater discharges", "current and future sewer users" would be required to "pick up the remaining 50% cost." (Emphases added) Based on the City's own conclusion, the cost of the Nacimiento Water Project is not attributable at all to current water customers but to new water service applicants and to sewer rates – and is certainly not applicable to water customers at a rate that reflects consumption of water, much of which is used for irrigation and never reaches the sewage treatment system. This conclusion is supported by the court in

*Mike Compton, Dir of Adm. Services*

*Fresno* as cited above which confirmed that revenues from the fee must not be used “for a purpose other than that for which the fee or charge was imposed” pursuant to Article XIII D, 6(b)(2).

The revenues generated by the proposed fee increase exceed the funds required to reduce salts and total dissolved solids in sewage effluent discharged into the Salinas River and the amount of the fee exceeds the cost of that service.

The Notice of Public Hearing Regarding Proposed Increase in Water Rates attempts to justify the Nacimiento Water Project as a needed method of reducing salt from water softeners and TDSs in sewage effluent. However, no discussion is offered to support how the results would be accomplished and information provided by the City indicates that more established, cost effective methods of purifying sewage effluent are available.

The idea that blending Nacimiento water into existing well water will “reduce the need for in-home water softening” and improve the quality of sewage effluent discharged into the Salinas River is entirely speculative – unsupported by data or information of any kind. In addition, it is questionable whether the levy of water fees to achieve higher quality sewage effluent conforms to the Section 6(b)(2) requirement that revenues shall not be used for any purpose other than that for which the fee is imposed – fees for water service must be used for the purpose of providing water service to the parcel charged, not for sewage treatment.

Even without considering the applicability of Section 6(b)(2), to justify increased consumption-based water service fees to provide a method for enhancing the quality of sewage effluent the City must demonstrate the efficiency and cost effectiveness of the method in relation to alternatives.

According to Table 3-11 “Cost Summary for Alternatives that Address Primary Project Criteria” from the Paso Robles “Water Quality Strategy Report”, a number of options for treating sewage effluent are drastically less costly than the Nacimiento Water Project including “industrial and commercial discharge quality control” the costs of which are, according to the report, “negligible in relation to the costs of other alternatives considered”. Even the more costly alternative of desalination of sewage effluent at an annual cost of \$1.04 million offers a far less expensive alternative to the \$6.8 million annual cost of importing Nacimiento water for blending. Even if properly charged to water rates instead of sewer rates, revenues from existing water customers to pay for the cost of the Nacimiento Water Project to provide for higher quality effluent will exceed the funds required to ensure the proper quality of sewage effluent and the amount of the proposed fee will exceed the cost of that service attributable to the charged parcels in violation of Proposition 218 requirements.

The revenues generated by the proposed fee increase exceed the funds needed to provide quality drinking water and the amount of the proposed fee exceeds the cost of providing drinking water to charged parcels.

While the Notice of Public Hearing Regarding Proposed Increase in Water Rates bases the need for the proposed Nacimiento Water Project in part on improving drinking water quality, the City has not established a need to improve the quality of its drinking water. In fact, the City’s August 7, 2007 staff report (Agenda Item no. 25) on the Paso Robles Water System and Water Supply, states that the quality of Paso Robles’ groundwater “meets existing regulatory requirements.” Again, to justify levying a new fee for the purpose of improving drinking water quality, the City must first demonstrate a need to improve water quality. Where there is no demonstrated need, revenues levied

to pay for the that which is not needed would categorically exceed the funds required to provide the service of drinking water to customer parcels and would necessarily be in excess of the cost of water service to charged parcels in violation of Proposition 218.

In addition, even if the City of Paso Robles did establish a need to enhance the quality of drinking water for its customer parcels, it would be required to justify the cost effectiveness of the Nacimiento Water Project as a method of enhancing water quality against alternative methods of direct water treatment in order to demonstrate that revenues levied from the fee do not exceed the funds required to provide the service.

The revenues generated by the proposed fee increase exceed the funds needed to provide water during summer peak demands and the amount of the proposed fee exceeds the cost of providing water during peak demands to charged parcels.

The September 2007 Draft Urban Water Management Plan for the City of Paso Robles confirms that high water demands for landscape irrigation during hot summer months strains the City’s capability to satisfy water needs. However, the Plan states that these high demands “can be reduced effectively through water-saving landscaping and irrigation practices, or satisfied with recycled water.”

The goal of meeting high summer water demands can be effectively reduced or satisfied completely with significantly less costly methods than the Nacimiento Water Project and pursuant to the court in *Fresno*, as stated above, where a fee is not required to provide the service, it exceeds the cost to provide the service and is in violation of Article XIII D, Section 6(b)(1).

In her October 18, 2007 letter to Paso Robles residents John Borst and Pascual Padilla, Attorney Iris Yang attempted to justify the legality of the proposed rate increases to existing customer parcels by stating that “[D]ue to declining water availability and water quality, construction of the pipeline is required to allow the City to continue to provide on-going water service..” . Ms. Yang’s statement is disproved, however, by the above cited and quoted data and conclusions provided by the City regarding water availability and quality from existing sources. Additionally, to be required, the Nacimiento Water Project would have to be analyzed along with other alternatives and found to be the only feasible way of meeting the water availability and water quality needs of charged parcels. In her letter Ms. Yang bases her analysis of the legality of Paso Robles’ proposed water rate increase on pre-Proposition 218 case law that has been replaced by Proposition 218 and the court decisions that have interpreted it.

Based on the information provided by the City of Paso Robles and the above analyses, the proposed rate increase is unlawful as a violation of, among other laws, Article XIII D of the California Constitution, Proposition 218. Current customer parcels which the City identifies to be charged for the total costs of the Nacimiento Water Project will not benefit from the Project because those parcels are already provided with, and pay fees for water service based on adequate available water quantity and quality. To justify any water rate increase to pay for the proposed Nacimiento Water Project the City must calculate and account for the costs of the project attributable new water service applicants and sewer fees and must propose water service rates that reflect those proportional allocated costs.

Since the new water source and infrastructure for its delivery into the existing system are not needed by current customer parcels and will provide water for new water service applicants in the future, a levy on current customer parcels is properly characterized as an assessment and must be

levied by assessment pursuant to the substantive and procedural requirements for assessments within Proposition 218. As was emphasized by the court in Fresno (above), the burden of demonstrating compliance with Proposition 218 is on the governmental entity which must offer evidence or argument to demonstrate the validity of a fee or charge.

In closing, my clients urge you to rescind the proposed water service fee increase. Any future fee increases should conform to Proposition 218 by generating revenues consistent with the funds required to provide the service and by charging fees for water services that reflect the actual costs of the service to charged parcels.

Best regards,

Cynthia Hawley

cc: James App

# Why Cast Your Vote Against The Proposed July 2008 City Water Rates

**UNFAIR** – In 2007 the City officials expressed connection fees “*would increase to provide adequate revenues to meet new infrastructure needs arising from new development and capital construction obligations for its [Nacimiento] pipeline and treatment facility.*” (SLO Financing Authority document, Sept. 10, 2007, p. A-19) Then in July 2008, contrary to what City officials would have you know, numbers from the City’s recent water rate study confirm current water customers will pay not just ½ but ALL of the capital cost for any infrastructure needed to annually bring 4000 acre-feet of Nacimiento water to Paso Robles. Which means NEW DEVELOPMENT FOR THE NEXT 30 YEARS CONTRIBUTES LITTLE OR PAYS NOTHING. (Read the financial analysis and conclusion at [www.paso218.org](http://www.paso218.org).) **Current city residents should not subsidize the high costs of new development!**

**UNAFFORDABLE** -- If all users of the Paso Robles Groundwater Basin paid their fair share of the City’s **\$330,400,000** Nacimiento Water Project to help prevent potential overdraft, your monthly NWP charge (based on City’s March 2008 water mailer) would be \$3.69. And in 2013 the City wants to charge you **at least \$150 a month** (not including sewer) for 25 billable units. This is much too high a bill to have your average water customer pay for development and to relieve Basin “stress” caused principally by those living and farming outside City limits.

**UNJUST** – That the Nacimiento water pipeline and water treatment plant are capital costs is beyond dispute. California’s Proposition 218 requires any charge upon City water customers for capital funding be an *assessment* or *special tax* and use a ballot vote to decide. Despite the City Manager’s\* belief, authorizing the use of **a written protest letter as the means to determine capital cost decisions is inappropriate**. See [www.paso218.org](http://www.paso218.org) for what California law and Proposition 218 states regarding capital cost decisions. Demand a ballot vote!

**UNNEEDED** -- According to SLOLAFCO’s Municipal Service Review (MSR), the City has annual rights to eight cubic feet per second from the wells situated adjacent to the Salinas River. The City’s water supply is adequate to serve the additional Sphere of Influence Areas. (MSR, p.1-7) No limits have been placed on the water drawn from the Paso Robles Formation. (MSR, p. 3-7) ...The Water Assessment completed pursuant to water code 10910 concluded **the City has an adequate water supply to accommodate the 20 years of growth planned for in the recent update of the General Plan** (Source: <http://www.slolafco.com>). Repeal the General Plan or put a moratorium on issuing building permits if a conflict exists with this point of fact in the Municipal Service Review.

**UNOBLIGATED** – In 2004 the City signed a “delivery entitlement contract” for Nacimiento water. City Government - without the consent of Paso Robles’ citizens - entered into an obligation to pay the capital cost of the Pipeline facility. Under that contract, water customers in our community have no stated legal or moral obligation to fund the *City’s* capital cost(s). City Government needs to act responsibly by paying their bill, not burden the taxpayer with 30 years of excessive debt!

\*Mr. App is City Manager for the City of Paso Robles

**For a protest vote form contact Concerned Citizens for Paso Robles  
[www.paso218.org](http://www.paso218.org) or 468-4214**

*Through its well system the City of Paso Robles extracted 3,540,107 units<sup>1</sup> of water in 2007. According to the City's June 2008 water rate study report by Kennedy/Jenks, customers used 2,951,855 units of water during 2007 (p.3). That's a difference of 588,252 units of surplus water, or enough to meet the water needs of 1960 future homes in our City.*

Clearly, current residents do not need or require any additional water.

**What is needed is better management and accountability of our City's water supply to reduce costs for current residents.**

Why a 20% water surplus wasted by the City?

It means \$3 million yearly in lost revenue.\*

This is simply unacceptable!

**Just say NO to the City's \$150  
a month<sup>2</sup> proposed water  
rates!!!**

1. Paso Robles City Water Division -- 2,648 million gallons produced divided by 748 gallons (1 billable unit) equals 3,540,107 units. See <http://www.prcity.org/government/departments/publicworks/water/about-water.asp> for number of gallons produced/pumped.

2. Based on an average consumption of 25 units a month in 2013 (\$149.90). **Excludes sewer cost.**

\*Based on the City's proposed variable unit charge of \$5.15, which may not reflect annual CPI adjustments.

**For more info and/or a protest letter to send the City visit [www.paso218.org](http://www.paso218.org)**